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1.

IN THE HON'BLE HIGH COURT OF CHHATTISGARH, AT BILASPUR

Single Bench

SECOND APPEAL No. 286 /2006

UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE 1908

APPELLANTS/ DEFENDANTS

1. Jasraj Shantilal Vaid, Proprietor Shantilal Vaid, S/o. Shri Jasraj Vaid, age 45 years, R/o. Sadar Bazar, Rajnandgaon (C.G.)

2. Dheeraj Vaid, S/o. Shri Jasraj Vaid, age 33 years, R/o. Sadar Bazar, Rajnandgaon (C.G.)

VERSUS

RESPONDENTS PLAINTIFFS

1. Anand Kumar S/o. Dhyan Chand Jain, age about 27 years, R/o. Sadar Bazar, Rajnandgaon (C.G.).

P.R. No. 1332 Dt. 6.
Presented by Shri Rupendra Verma
dated 6/9/06

Arising out of the Judgement and decree passed by the Court of Ist. Additional District Judge, Rajnandgaon, Distt. Rajnandgaon, (Presided over by Smt. Rajani Dubey) in Civil Appeal No.28-A/2003, on 30/3/2006 allowing the appeal and decreeing the suit of the respondent/plaintiff for eviction from the suit shop & also passing decree for rent @ 90 per month till delivery of possession & costs throughout.

2.

THE ABOVE APPEAL HAD ARISEN OUT OF

The judgement and decree passed by Civil judge Class-II, Rajnandgaon, Distt. Rajnandgaon (C.G.) Presided over by Smt. Girija Devi Marawi, in Civil Suit No. 201-A/2001 on 23/6/2003 dismissing the suit of respondent/plaintiff for eviction from the suit shop & passing decree only for Rs.180/- as arrears of rent.

Rs.1080/- Court fee paid Rs.100/-

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ....SA-286/06 सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

14.08.2006

Shri P.K. Verma, Sr. Advocate with Shri Raghvendra Verma, Counsel for the appellants.

Shri S.C. Verma, Counsel for the respondent, who appears on Caveat Petition No.35/2006.

Arguments on admission heard.

Order passed as follows :

ORAL ORDER
(14.08.2006)

This is the tenants' Second Appeal filed under Section 100 of the Code of Civil Procedure. This appeal arises out of judgment and decree dated 30/03/2006 passed by the Court of First Additional District Judge, Rajnandgaon, District – Rajnandgaon in Civil Appeal No.28-A/2003 arising out of judgment and decree dated 23/6/2003 passed in Civil Suit No.201-A/2001 by the Second Civil Judge Class-II, Rajnandgaon, District – Rajnandgaon (C.G.).

The brief facts are that the plaintiff/landlord filed a suit for eviction under Sections 12 (1) (a), 12 (1) (c) and 12 (1) (f) of the M.P. (C.G.) Accommodation Control Act, 1961.

The trial Court negatived all the grounds and dismissed the suit of the landlord. In First Appeal, the judgment and decree passed by the trial Court was reversed and the decree for eviction was passed on the grounds specified in Sections 12(1)(a) and 12(1)(f) of the said Act.

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आदेश पत्रक

मामला क्रमांक SA-286/06 **सन्** **200**

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Section 12(1) (a) provides for eviction of a tenant on the ground when the tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him by the landlord in the prescribed manner, whereas, Section 12(1) (f) provides for eviction from a non-residential accommodation, which is required *bonafide* by the landlord for the purpose of continuing or starting his business or that of any of his major sons or unmarried daughters if he is the owner thereof or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned.

Learned counsel for the appellants firstly argues on Section 12 (1) (f) of the said Act. His submission is that admittedly, Nathmal Mohta was the owner and landlord of this accommodation and after his death, the accommodation was succeed in the ownership of his wife namely Smt. Geeta Devi. His further submission is that after the death of Geeta Devi, her 2 brothers namely Bal Kishen and Devi Kishen have been shown to be her successors and the present plaintiff is a transferee from these two persons. He also submits that the above line of succession set forth by the plaintiff regarding he being the owner/landlord of the suit accommodation is not properly established by evidence on record and the First

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आदेश पत्रक

मामला क्रमांक SA-286/01 **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Appellate Court erred in law in holding that the plaintiff was the owner of the suit premises. Therefore, the decree for eviction under Section 12(1) (f) was not possible.

About Section 12(1) (a) of the said Act, he argues that according to the plaint allegations, the premises was given at a monthly rent of Rs.90/- and the defendants were in arrears since April 1998. His submission is that the suit was filed on 4/11/1999 and the service of notice of the Court was made on 13/1/2000 and thereafter, the defendants have deposited a sum of Rs.4,860/- as the amount of arrears of rent on 4/9/2002. He also submits that since there was a substantive compliance of Section 12(1) (a) read with Sections 12 (3) and 13 of the said Act, the Appellate Court further erred in law in passing a decree for eviction on this count also.

So far as eviction on the grounds of non-payment of arrears of rent is concerned, on the basis of arguments advanced by learned counsel for the appellants, it is apparent that the arrears of rent were not deposited in statutory period so as to claim benefit of not passing a decree under Section 12(1) (a) of the said Act. On their own saying, the arrears in sum of Rs.4,860/- was not deposited by them either after service of the notice dispatched to them by the lawyer of the plaintiff or even after service of notice of the Court, which, according to learned counsel for the appellants, was effected on 13/1/2000, and it was only deposited on 4/9/2002.

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आदेश पत्रक

मामला क्रमांक ...S.A.-286/06 **सन्** **200**

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

In the facts and circumstances, in the opinion of this Court, the First Appellate Court committed no error of law in holding that the ground under Section 12(1) (a) of the said Act was made out and the landlord was entitled to get the decree for eviction on the said ground.

Since I have taken one of the grounds to be rightly held to be proved by the First Appellate Court and a decree for eviction can be passed on the said ground alone, I am not inclined to enter into the controversy regarding the second ground i.e. the ground under Section 12(1) (f) of the said Act.

In the opinion of this Court, no substantial question of law is involved in this appeal. The appeal filed by the appellants is dismissed and the judgment and decree passed by the First Appellate Court are confirmed.

The Caveat Petition No.35/2006 stands discharged.

Sd/-
Sunil Kumar Sinha
Judge